



May 8, 2015

Ms. Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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Office of Proceedings
May 8, 2015
Part of Public Record**

RE: *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In Broome County, NY; Essex, Union, Somerset, Hunterdon, and Warren Counties, NJ; Luzerne, Perry, York, Lancaster, Northampton, Lehigh, Carbon, Berks, Montgomery, Northumberland, Dauphin, Lebanon, and Philadelphia Counties, PA; Harford, Baltimore, Anne Arundel, and Prince George's Counties, MD; The District of Columbia; and Arlington County, VA*
STB Docket No. AB-156 (Sub-No. 27X)

Dear Ms. Brown:

Delaware and Hudson Railway Company, Inc. submits the following for filing in the above proceeding:

1. Reply to Petitions to Revoke Exemption with attached Verified Statement of James D. Clements
2. Reply to Petition to Toll Time to File an OFA

Please contact me should you have any questions.

Respectfully submitted,

STINSON LEONARD STREET LLP


David F. Rifkind

cc: Parties of Record in this proceeding and in FD 35873

CERTIFICATE OF SERVICE

I, David F. Rifkind, hereby certify that I transmitted a copy of the foregoing correspondence including the enclosures to the following parties by First Class United States mail and by e-mail where an e-mail address is included on the Board's official service list for STB Docket No. AB-156 (Sub-No. 27X) and FD 35873 on this 8th day of May 2015.


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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-156 (SUB-NO. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN BROOME COUNTY, NY; MIDDLESEX, ESSEX, UNION, SOMERSET, HUNTERDON,
AND WARREN COUNTIES, NJ; LUZERNE, PERRY, YORK, LANCASTER,
NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND,
DAUPHIN, LEBANON, AND PHILADELPHIA COUNTIES, PA; CECIL, HARFORD,
BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE'S COUNTIES, MD; THE
DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA

REPLY TO PETITIONS TO REVOKE EXEMPTION

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Dated: May 8, 2015

BEFORE THE
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DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA¹

REPLY TO PETITIONS TO REVOKE EXEMPTION

Delaware and Hudson Railway Company, Inc. ("D&H") submits this Reply in response to the Motion/Petition to Reject/Revoke D&H's Discontinuance of Trackage Rights Exemption filed by James Riffin ("Riffin") and the Petition to Revoke and for Stay of Exemption filed by Samuel J. Nasca ("Nasca") on behalf of SMART/Transportation Division, New York State Legislative Board. Riffin contends that D&H failed to provide proper notice to interested parties while Nasca claims that D&H's discontinuance of overhead trackage rights is an improper subject for a notice of exemption proceeding. Neither petition has merit and both should be denied.

¹ Caption revised to include Middlesex and Cecil Counties, inadvertently omitted from D&H's initial filing.

INTRODUCTION

In this proceeding, D&H has invoked the 2-year out of service class exemption to discontinue approximately 670 miles of trackage rights, which includes approximately 660 miles of overhead trackage rights and 10 miles of local terminal trackage rights in Philadelphia over which D&H has not operated since March 2013. Although the mileage is considerable, the majority of the subject trackage rights have not been used in more than a decade for either local or overhead traffic. As to the rest, D&H has not moved local traffic in more than two years and its continued operation of overhead traffic is no longer economically justifiable. In light of this, the discontinuance is indisputably of limited scope. Thus, despite ample notice both in this proceeding and in the proceeding where Norfolk Southern Railway (“NSR”) seeks to acquire and operate 282.55 miles of rail lines from D&H (the “D&H South Lines”), Finance Docket No. 35873 (the “Acquisition Proceeding”), no shipper or community has objected to the discontinuance. Moreover, shippers, connecting rail carriers and local and state governments have expressed overwhelming support for NSR’s acquisition of the D&H South Lines in the pending Acquisition Proceeding. As notice of the discontinuances was included in the Acquisition Proceeding and consummation of that transaction will sever D&H’s physical connection to the overhead trackage rights, the support for NSR’s acquisition of the D&H South Lines effectively equates to support for D&H’s discontinuance of the subject overhead trackage rights.

Notwithstanding the clear case for discontinuance and the overwhelming support from shippers and communities, James Riffin and Samuel Nasca have filed petitions to revoke the exemption. Notably, neither Riffin nor Nasca are shippers or represent communities that are

located on the subject trackage rights and neither challenge the discontinuance on substantive grounds. Rather, both ask the Board to revoke the exemption on procedural grounds.

Riffin, on Riffin's behalf, asks the Board to revoke because of alleged technical deficiencies in the Notice of Exemption including the omission of some ZIP Codes traversed by the overhead trackage rights. However, the Board's concern in an exemption proceeding is ensuring that potentially affected shippers and communities are provided with effective notice, and not with ensuring rigorous technical compliance merely for the sake of compliance. Moreover, requiring exacting compliance would impose an undue regulatory burden, particularly here where the identification of ZIP Codes traversed by overhead trackage rights is of both questionable utility and difficult. Indeed, Riffin erroneously identifies six ZIP Codes which illustrates the difficulty D&H faced here. Since there is no question that potentially impacted shippers and communities have received ample notice of D&H's overhead trackage rights discontinuance, revocation is not warranted.

Nasca, on behalf of the New York State Legislative Board of SMART/TD-NY, argues that the use of the 2-year out of service class exemption for an overhead trackage rights discontinuance is improper given the mileage involved. Nasca argues that the class exemption was designed for abandonments and fails to consider the impact on overhead shippers. But the ICC previously considered and rejected this same concern and the Board's regulations expressly authorize discontinuance of overhead trackage rights in a notice proceeding. The Board has repeatedly concluded that discontinuance of overhead trackage rights transactions are of limited scope and that continued regulation is unnecessary to protect shippers from abuse of market power regardless of the number of route miles involved. Moreover, Nasca ignores the fact that

there are no overhead shippers over the vast majority of the subject trackage rights. The use of the class exemption here is consistent with Board's rules and precedent, and clearly appropriate.

BACKGROUND

On March 19, 2015, D&H filed a Notice of Exemption to discontinue approximately 670 miles of trackage rights. Currently, D&H operates over only approximately 115 miles of the subject trackage rights. Accordingly, although D&H is using the 2-year out of service class exemption in this proceeding, the vast majority of the subject trackage rights have not been used for far longer than two years. Indeed, it has been more than a decade since D&H operated over the trackage rights between Harrisburg, Pennsylvania and Potomac Yards, Virginia, or over the former CNJ line west of Bound Brook, NJ. Verified Statement of James D. Clements ("Clements V.S.") at 2. As a result, D&H has little familiarity with these lines including changes that have been made to the lines in the interim.

In preparing its Notice of Exemption, D&H made a good faith effort to identify all of the lines over which D&H possesses trackage rights based on historical documents and to painstakingly match up those lines with the ZIP Codes traversed. The process was complicated by D&H's lack of familiarity with the lines and the fact that, in some instances, the descriptions of the trackage rights in the historical records are vague, do not reflect changes to the lines, or contain gaps. In total, D&H identified nearly 200 ZIP Codes and 26 counties which it listed in its Notice of Exemption.

Prior to filing its Notice of Exemption, D&H published a notice of its intent to discontinue the trackage rights in nine newspapers of general circulation. The pre-filing advertisement ran in publications that circulate in every ZIP Code and county through which the subject trackage rights traverse, including the ZIP Codes and counties that Riffin alleges were

improperly omitted. The pre-filing advertisements correctly identified the beginning and end points of the overhead trackage rights. In addition, D&H served notice of the proposed discontinuance on the parties required by Section 1152.50(d)(1).

In addition to the notifications provided in this exemption proceeding, notice of D&H impending trackage rights discontinuance was also provided in the Acquisition Proceeding. Specifically, NSR's November 17, 2014 Application describes the trackage rights to be discontinued (Application at 27-28), and the trackage rights discontinuance is referenced in filings by other parties, including Riffin and Nasca. Finally, the Board's April 16, 2015 decision in this proceeding was served on parties of record in the Acquisition Proceeding. Many of the interested persons in the Acquisition Proceeding are the same persons that would be potentially interested parties in this proceeding.

On April 20, 2015, Riffin and Nasca filed petitions challenging the exemption.²

ARGUMENT

I. The Board Should Deny Riffin's Petition.

Riffin asks the Board to reject D&H's Notice of Exemption or revoke the exemption based on D&H's alleged failure to achieve complete compliance with the Board's rule requiring the Notice of Exemption to include all ZIP Codes that the subject line traverses. Specifically, Riffin alleges that D&H omitted, in addition to certain other information, 19 ZIP Codes were omitted from the nearly 200 ZIP Codes listed in the Notice.³ Riffin is wrong with respect to at

² Nasca also requests that the Board consolidate this proceeding with that in Finance Docket No. 35873. D&H will address that request in a separate filing.

³ Riffin also alleges that D&H omitted station names. However, D&H cannot serve any stations along the route as its trackage rights are overhead only. Further, the Board's regulations do not require station names.

least 6 of the ZIP Codes – D&H has no trackage rights in Hudson County,⁴ one ZIP code is no longer valid and two are for P.O. Boxes.⁵ While the subject overhead trackage rights appears to either traverse or abut 13 of the ZIP Codes, 11 of the 13 ZIP Codes concern lines over which D&H has not operated in more than a decade. Clements V.S. Ex. 1. The remaining two ZIP Codes, both located in Middlesex County, NJ, concern lines over which D&H has not operated since June 2012. Clements V.S. at 3. And since D&H’s rights are overhead only, D&H cannot serve any shipper located in those ZIP Codes. Further, D&H’s notice of intent was published in newspapers of general circulation in those ZIP Codes. Clements V.S. at 4. Consequently, the inadvertent omission of the ZIP Codes does not affect the efficacy of D&H’s notification to potentially interested parties and, therefore, does not warrant rejection or revocation of D&H’s Notice of Exemption.

The purpose of the Board’s regulations prescribing certain notice and publication requirements is to ensure that “potentially interested parties are given accurate information about the scope of ‘the transaction or service’ in order to be able to challenge it.” *Norfolk So. Ry. Co.—Abandonment Exemption—In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No.

⁴ While Riffin acknowledges that “no portion of the D&H’s trackage rights on the LVRR are located in Hudson County, NJ,” Riffin Pet. ¶ 17, he asserts incorrectly that D&H’s rights over the former Central New Jersey line extend to Jersey City in Hudson County. Riffin Pet. ¶¶ 18-23. Exhibit A to the April 25, 1979 trackage rights agreement, attached as Clements V. S. Ex. 2, indicates that D&H’s overhead rights on the former CNJ lines between Oak Island and Phillipsburg commence on USRA Line Code 0205 at Oak Island Jct. at milepost 1.7. The USRA Final System Plan identifies Line Code 0205 as the Newark and Elizabethport Branch. Clements V.S. Ex. 3. The CNJ Newark and Elizabethport Branch trackage map (Clements V.S. Ex. 4) identifies Oak Island Junction as located between Newark Airport and Wilson Avenue in Newark in Essex County. Both Newark Liberty International Airport and Wilson Avenue are located in the City of Newark, which is entirely within Essex County. See Clements V.S. Exs. 5-6.

⁵ According to the United States Postal Service’s website, 21101 is not a valid ZIP Code and 07061 and 21027 are each limited to specific P.O. boxes. See Exhibit A attached hereto.

237X), slip op. at 3 (STB served April 3, 2006). Strict compliance with the Board regulations is not in and of itself the goal, and the Board has not required strict compliance where it has been satisfied that all interested parties have received notice. *See Buffalo & Pittsburgh R.R., Inc.—Abandonment Exemption—In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 7X) (STB served Nov. 4, 2008). In *Buffalo & Pittsburgh*, the Board considered and rejected a challenge to an abandonment notice proceeding based on incomplete ZIP code information. The Board determined that the failure to include one of five ZIP Codes did not warrant revocation of the exemption, particularly because the carrier had complied, like D&H has here, with the newspaper publication requirements at 49 CFR § 1105.12. The Board’s sensible ruling in *Buffalo & Pittsburgh* is consistent with the overall purpose of the class exemption, *i.e.*, to reduce regulatory burden where scrutiny is not warranted.

Significantly, *Buffalo & Pittsburgh* involved an abandonment of a rail line, which involves the permanent cessation of rail service to shippers on the line. Thus, there is a stronger argument for exactitude in an abandonment proceeding than for an overhead trackage rights discontinuance. By contrast, the discontinuance of overhead trackage rights has little or no impact on shippers and communities located on the line, as the trackage rights carrier is unable to serve them and those shippers continue to enjoy rail service from the track owner. Accordingly, the inadvertent omission of ZIP Codes should raise even less of a concern in this trackage rights discontinuance proceeding which primarily involves overhead rights.

Here, the information contained in the Notice of Exemption, the newspaper advertisements and the pre-filing notices was more than sufficient to inform interested parties as to the scope of the transaction. Arguably, the most important information in an overhead trackage rights discontinuance proceedings is the endpoints of the trackage rights, as the trackage

rights carrier cannot serve the shippers and communities located on the trackage rights lines. D&H correctly identified the endpoints in its Notice, newspaper publications, and pre-filing notices. Moreover, any actual errors in D&H's description of the subject lines concern only a few particular intermediate points over which D&H has only the right to traverse. As set out in Clements V.S. at 3 and Ex. 1, D&H cannot serve any shipper located in any of the omitted ZIP Codes and has not operated over lines in eleven of those ZIP Codes in more than a decade, and in the remaining two ZIP Codes since June 2012. As to the remaining six ZIP Codes, one is no longer a valid ZIP Code, two are associated with specific P.O. boxes, and the three Hudson County ZIP Codes concern lines over which D&H does not have trackage rights. Further, D&H's discontinuance of its trackage rights has been widely publicized in the context of the Acquisition Proceeding. Accordingly, the risk is negligible that a potentially interested shipper, connecting carrier, or any other person with a legitimate interest has been misled or prejudiced by the inadvertent omission of a scattering of ZIP Codes along hundreds of miles of D&H's unused overhead trackage rights. Because D&H has more than substantially satisfied the Board's notice requirements to discontinue its trackage rights under the class exemption, the Board should deny Riffin's petition.

II. The Board Should Deny Nasca's Petition to Revoke the Exemption.

Nasca objects to D&H's use of the class exemption to discontinue overhead trackage rights as improper. According to Nasca, the class exemption was intended only to be used for abandonments of line segments over which no local traffic has moved in the last two years. Nasca contends that it is not appropriate for what Nasca terms as "massive" discontinuances of overhead trackage rights because such discontinuances primarily affect overhead traffic, which the exemption procedure does not adequately consider. Lastly, Nasca claims that the class

exemption fails to consider the potential impact on D&H's continuing financial viability. Nasca's description of the discontinuance as "massive" is misleading and his arguments misconstrue Board precedent.

Before turning to the substance of Nasca's argument, it is important to note that Nasca is affiliated with a labor organization and not a shipper. In fact, no shipper has challenged D&H's use of the class exemption in this proceeding or otherwise expressed concern regarding the impact of the discontinuances. More than 125 shippers and other interested parties have filed their support of NSR's acquisition of the D&H South Lines which will sever D&H's physical connection to the subject trackage rights.

As to Nasca's description of the extent of the discontinuance, although the total mileage at issue is considerable, the mileage over which any overhead traffic currently moves is relatively small. Presently, D&H operates over only approximately 115 miles of the subject trackage rights. D&H does not, and has not for several years, operated over the other 555 miles. *Clements V.S. at 2.* In any event, the Board has repeatedly granted exemptions for discontinuances notwithstanding the significant distances involved. *See, e.g., Norfolk and W. Ry. Co.—Purchase—Ill. Terminal R.R. Co., 363 I.C.C. 882, 895 (1981)* (abandonment of overhead trackage rights on five line segments totaling more than 200 miles is limited in scope).

Likewise, Nasca's argument that the class exemption is improper where the impact on overhead traffic is primarily at issue is wrong. When the ICC established the 2-year out of service class exemption it specifically addressed and rejected the concern that Nasca now raises. Following remand from the U.S. Circuit Court of Appeals on this issue, the ICC explained that in an abandonment proceeding, the ICC is concerned with the potential "harm to the shippers and communities located on the line, or who are otherwise dependent on the line for their service"

and not with the impact on overhead traffic. *Exemption of Out of Service Rail Line*, 2 I.C.C.2d 146, 150 (1986). Because the impact on overhead traffic would not affect the outcome of an abandonment application, the Commission concluded that it was unnecessary to consider this factor in an exemption proceeding:

Because overhead traffic would not affect the ultimate decision whether to permit an abandonment even in formal application proceedings, the exemption has very limited impact, if any at all, on overhead traffic. Moreover, we cannot recall even one instance where shippers of overhead traffic demonstrated an interest, either in formal cases or exemption proceedings. Therefore, the scope of this exemption, viewed in terms of its potential impact, remains limited.

Id. at 156. The ICC's conclusion is equally applicable in abandonments and trackage rights discontinuances. Indeed, it would be unreasonable for the Board to subject the termination of overhead trackage rights to greater scrutiny than abandonment proceedings which result in the permanent cessation of rail service on a line.

Use of the class exemption here is fully in keeping with its purpose – to eliminate unnecessary continued regulation of transactions that are limited in scope and where shippers are not threatened by the abuse of market power. The Board has repeatedly found the discontinuance of overhead trackage rights to be of a limited scope which does not require detailed scrutiny. *See, e.g., BNSF Ry. Co.—Discontinuance of Trackage Rights Exemption—in Cook County, IL*, STB Docket No. AB-6 (Sub-No. 462X) (STB served May 2, 2008) (detailed scrutiny unnecessary where trackage rights are simply overhead and no local service is affected); *Del.-Lackawanna R.R. Co., Inc.—Discontinuance Exemption—in Luzerne and Lackawanna Counties, PA*, STB Docket No. AB-432X, 1996 WL 47159 (STB served Feb. 7, 1996) (discontinuance of unused trackage rights of limited scope); *So. Ry. Co. and Norfolk So. Corp.—Ill. Cent. R.R. Co. Line between Fulton, KY and Haleyville, AL—and Trackage Rights—Ill. Cent.*

R.R. Co. Lines between Fulton, KY and Centralia, IL, Finance Docket No. 31088 and ICC Docket No. AB-43 (Sub-No. 148X) (ICC served May 9, 1988) (discontinuance of overhead trackage rights of limited scope).

Similarly, Nasca's argument that the proposed discontinuance requires the Board's scrutiny to determine whether D&H's survival is threatened is unfounded. The Board has long recognized that it is unnecessary for it to consider the impact of trackage rights discontinuances on the discontinuing carrier:

It is true that trackage rights are one method of making the services of an additional rail carrier available in a market. But use of this exemption is available only to the carrier holding the trackage rights, and not to the owning road. No carrier can be forced under the exemption to surrender its right to use tracks. Moreover, no rail carrier would voluntarily relinquish its right to operate over certain tracks if doing so would impair its service or hinder its ability to compete. Thus, regulation is not necessary in this regard because carriers will follow their own self interest.

2 I.C.C.2d at 156. In any event, as explained in *Clements V.S.* at 3, discontinuance of these trackage rights will enhance, not hinder, D&H's ability to compete.

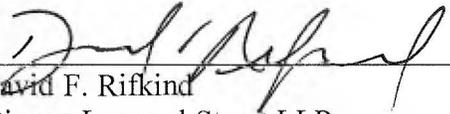
Finally, Nasca requests that the Board stay the exemption but fails to provide any reasoned basis for his request. This request should also be denied. Accordingly, the Board should deny Nasca's petition in all respects.

CONCLUSION

For the foregoing reasons, D&H respectfully requests that the Board deny Riffin's and Nasca's petitions to revoke D&H's trackage rights discontinuance exemption.

Respectfully submitted,

Dated: May 8, 2015



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EXHIBIT A

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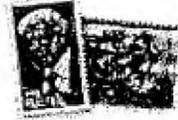
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-156 (SUB-NO. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN BROOME COUNTY, NY; MIDDLESEX, ESSEX, UNION, SOMERSET, HUNTERDON,
AND WARREN COUNTIES, NJ; LUZERNE, PERRY, YORK, LANCASTER,
NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND,
DAUPHIN, LEBANON, AND PHILADELPHIA COUNTIES, PA; CECIL, HARFORD,
BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE'S COUNTIES, MD; THE
DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA

VERIFIED STATEMENT OF JAMES D. CLEMENTS

My name is James D. Clements. I am employed by Canadian Pacific Railway Company ("CP") as Vice President Strategic Planning and Transportation Services. I have been employed by CP since 1994 and have occupied my present position since 2014. During my employment with CP, I have served in a variety of positions in planning, operating, commercial, and administrative roles. Since 2013, my responsibilities have included tactical and strategic asset acquisitions, line rationalization, and other strategic transactions to preserve and improve the efficiency and capacity of CP's system including its indirectly owned subsidiaries such as the Delaware and Hudson Railway Company, Inc. ("D&H"). In my prior positions, including as Director, Mines, Metals and Aggregates and as General Manager – Car Management, I participated in the operations of D&H. I provide this statement in support of the D&H's Reply to Petitions to Revoke and Reply to Petition to Toll.

The majority of D&H's trackage rights that are the subject of this discontinuance proceeding were obtained as part of the Final System Plan with the intention of enabling D&H to compete effectively with the newly formed Conrail. Ensuing changes in the past three decades, however, have had the effect of eliminating the utility of these trackage rights for D&H.

For example, the trackage rights between Harrisburg and Potomac Yards initially allowed D&H to interchange traffic with the Southern Railway. After the Southern merged with the Norfolk and Western Railway, however, D&H's participation in traffic was reduced when the interchange was shifted north to New York and Pennsylvania or in some cases eliminated altogether. The subsequent Conrail acquisition by Norfolk Southern and CSXT effectively eliminated any residual utility to those overhead trackage rights and D&H has not operated between Harrisburg and Potomac Yards in more than a decade.

Similarly, the trackage rights between Allentown, PA and Oak Island in Newark, NJ ostensibly established D&H as a competitor to Conrail for New York and New Jersey port traffic. The division of Conrail, however, put D&H at a significant disadvantage to compete for such traffic and D&H has handled no intermodal or carload traffic to or from Oak Island since June 2012. D&H also no longer operates over its trackage rights to and within Philadelphia due to its continual loss of traffic to rail and intermodal competitors. D&H handled minimal traffic over these trackage rights in 2012 and no traffic since March 11, 2013.

Although D&H continues to operate over its trackage rights between Dupont and Allentown and between Sunbury and Harrisburg in Pennsylvania, due to the factors discussed above, the volumes have diminished significantly. The diminishing volumes prevent D&H from realizing operating efficiencies from economies of density, which results in high operating costs. Not coincidentally, D&H interchanges the vast majority of the traffic that it moves between

Dupont and Allentown with NSR. D&H's traffic between Sunbury and Harrisburg is similarly low volume, carload traffic and D&H fills the excess capacity on the trains it operates with NSR haulage traffic. Accordingly, the proposed trackage rights discontinuance will strengthen D&H as a carrier and a competitor by allowing D&H to focus resources and capital where it is better able to compete for traffic.

Attached hereto as Exhibit 1 is a chart of the 19 ZIP Codes that James Riffin ("Riffin") alleges were omitted from D&H's Notice of Exemption. As illustrated in the chart, D&H has not operated over lines in eleven of the ZIP Codes in more than a decade, and has not operated over the lines located in the two valid ZIP Codes in Middlesex County, NJ since June 2012. As to the remaining six ZIP Codes, it is my understanding that one is no longer a valid ZIP Code, two are associated with specific P.O. boxes, and the three Hudson County, NJ ZIP Codes concern lines over which D&H has no trackage rights.

As to the Hudson County ZIP Codes, D&H's overhead trackage rights to Oak Island over both the former Lehigh Valley Railroad ("LVRR") and Central Railroad of New Jersey ("CNJ") terminate in Newark, not Jersey City as Riffin asserts. Riffin's Petition ¶¶ 18-21 and Exhibit One pp. 39-44 incorrectly assume that Oak Island Jct at milepost 1.7 is located on CNJ's Main Line, USRA Line Code 0201. Attached hereto as Exhibit 2 is a true and correct copy of the pertinent provisions of the April 25, 1979 trackage rights agreement ("Agreement"), which granted D&H's trackage rights to Oak Island. Exhibit A to the Agreement identifies the CNJ endpoint as Oak Island Jct. at milepost 1.7 on USRA Line Code 0205. The excerpt of the July 26, 1975 Final System Plan attached hereto as Exhibit 3 identifies USRA Line Code 0205 as the Newark and Elizabethport Branch. CNJ's Newark and Elizabethport Branch trackage map attached hereto as Exhibit 4 indicates that Oak Island Jct. is located north of Newark Airport and

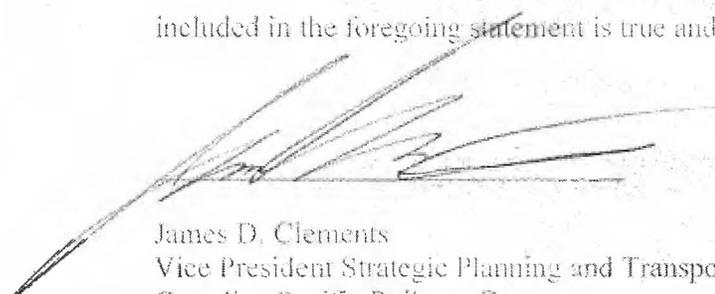
south of Wilson Avenue in the City of Newark. The LVRR timetable dated August 10, 1975 attached hereto as Exhibit 5 confirms that Oak Island Jct. (LVRR milepost 8.6) is west of Newark Bay. A current map of Newark, NJ attached hereto as Exhibit 6 clarifies that Newark Liberty International Airport and Wilson Avenue are located entirely within the city and entirely within Essex County, NJ.

All the ZIP Codes Riffin identified are included in the areas of circulation by D&H's newspaper notices.

D&H lacks the facilities at Oak Island to support the movement of municipal solid waste and silica from Oak Island that Riffin offers to subsidize in his Notice of Intent to File an Offer of Financial Assistance.

VERIFICATION

I, James D. Clements, declare under penalty of perjury that I am authorized to make this verification on behalf of Delaware and Hudson Railway Company, Inc., and that the information included in the foregoing statement is true and correct to the best of my knowledge and belief.



James D. Clements
Vice President Strategic Planning and Transportation Services
Canadian Pacific Railway Company

Dated: May 8th, 2015

EXHIBIT 1

ZIP code	County	ZIP code within circulation area of newspaper advertisements	D&H rail service after June 2012	Local service trackage rights
07302	Hudson County, NJ ¹	Yes	No	No
07304	Hudson County, NJ ¹	Yes	No	No
07305	Hudson County, NJ ¹	Yes	No	No
07061	Middlesex County, NJ	Yes	No	No
07080	Middlesex County, NJ	Yes	No	No
08820	Middlesex County, NJ	Yes	No	No
08821	Somerset County, NJ	Yes	No ²	No
08869	Somerset County, NJ	Yes	No ²	No
08876	Somerset County, NJ	Yes	No ²	No
08826	Hunterdon County, NJ	Yes	No ²	No
08829	Hunterdon County, NJ	Yes	No ²	No
08833	Hunterdon County, NJ	Yes	No ²	No
08889	Hunterdon County, NJ	Yes	No ²	No
21085	Harford County, MD	Yes	No ³	No
21101	Harford County, MD	Yes	No ³	No
21027	Baltimore County, MD	Yes	No ³	No
21213	Baltimore City, MD	Yes	No ³	No
21202	Baltimore City, MD	Yes	No ³	No
21216	Baltimore City, MD	Yes	No ³	No

¹ D&H's trackage rights over former CNJ line do not extend to Jersey City in Hudson County.

² D&H's trackage rights operations have not traversed these ZIP codes since c. 1985.

³ D&H's trackage rights operations have not traversed these ZIP codes in more than a decade.

EXHIBIT 2

M.D. 19696

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THIS AGREEMENT made this 25th day of April, 1979
between CONSOLIDATED RAIL CORPORATION ("Conrail"), a corporation
of the Commonwealth of Pennsylvania, and DELAWARE AND HUDSON
RAILWAY COMPANY ("D&H"), a corporation of the State of Delaware.

RECITALS

A. The parties have acquired the right to conduct rail operations over certain lines of railroad hereinafter described ("Joint Lines") as provided in the Final System Plan of the United States Railway Association ("USRA") adopted pursuant to Section 206(c)(1)(B) of the Regional Rail Reorganization Act, as amended ("Rail Act").

B. The Joint Lines were conveyed to Conrail subject to operating rights granted to D&H either by the railroads in reorganization which had conducted rail operations over such properties prior to April 1, 1976, or by persons whose rail properties were operated or leased by railroads in reorganization which had conducted such operations.

C. The parties desire to set forth the terms and conditions for D&H's exercise of operating rights over the Joint Lines.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties do hereby agree as follows:

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ARTICLE I

JOINT FACILITIES

Section 1.01. Description of Joint Lines. This Agreement shall set forth the terms and conditions of D&H's operation over the Joint Lines described in detail on Exhibit A and included in one of the following Joint Line Routes:

<u>Joint Line Route</u>	<u>Operating Rights Grantor</u>
Oak Island-Freemansburg	Trustees of Lehigh Valley Railroad Company, Debtor
Oak Island-Phillipsburg	Trustee of Central Railroad Company of New Jersey, Debtor
Freemansburg-Lehighton	Trustees of Lehigh Valley Railroad Company, Debtor
Lehighton-DuPont	Trustees of Lehigh Valley Railroad Company, Debtor and Lehigh Coal and Navigation Company, Debtor
Saucon-Lehighton	Lehigh Coal and Navigation Company
Allentown-Reading-Philadelphia	Trustees of Reading Company, Debtor and Allentown Terminal Railroad Company
Sunbury-Rockville	Trustees of Penn Central Transportation Company, Debtor and Trustees of Northern Central Railway Company, Debtor
Lanesboro-Hornell	Trustees of Erie Lackawanna Railway Company, Debtor
Hornell-Buffalo	Trustees of Erie Lackawanna Railway Company, Debtor.

The parties have been unable to agree upon the lines to be included in D&H's operating rights beyond Buffalo "FW" (MP 422.4)

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and shall make a continuing effort to resolve open questions concerning these lines. Either party may, upon prior notice to the other party, request USRA to restate the lines intended to be included in the operating rights designated to D&H beyond Buffalo "FW". The parties agree to be bound by such designation.

Section 1.02. Facility Changes, Additions and Removals.

Conrail shall not remove or shall not alter the Joint Lines if such alteration will increase D&H's cost of operating or the time required under normal conditions for D&H's trains to traverse the Joint Lines. Subject to the foregoing, Conrail may improve or add to the Joint Lines for its own benefit. D&H may request facility changes, additions and betterments to the Joint Lines. Conrail and D&H in good faith shall determine the proportion of benefit to each of them of facility changes, additions and betterments proposed by D&H and if such a determination can be agreed to by Conrail and D&H, each of them shall bear their proportionate cost of such facility changes, additions and betterments. If Conrail, in the exercise of its best business judgment, determines that its proportionate benefit from any such facility change, addition or betterment is less than the amount of the cost thereof which D&H believes should be borne by Conrail, Conrail shall nonetheless make such facility change, addition or betterment at D&H cost and expense if requested in writing by D&H.

ARTICLE II

JOINT LINE OPERATIONS - GENERAL

Section 2.01. Scope of Operations. D&H shall have the right to operate such rail service over the Joint Lines as it may deem necessary or advisable to provide efficient and economical transportation consistent with the Interstate Commerce Act and with its operating authority under the Rail Act including, without limiting the foregoing, pick-up and set-out of bad order cars, necessary repair and servicing of equipment, and the operation of trains, cars or vehicles for inspection and management purposes. D&H and Conrail shall interchange traffic at the Joint Line locations of Buffalo, Binghamton, DuPont, Allentown, Philadelphia, Harrisburg and Oak Island (intermodal only). D&H shall also have the right to interchange cars with other carriers, directly or through switching tariffs or haulage arrangements and to operate onto or off other carriers from points on the Joint Lines between Binghamton and Buffalo, New York; Attica and Groveland, New York; at and within the Buffalo, Black Rock and Niagara Falls, New York, terminal areas; including without limitation the right to interchange with and operate on or off the Philadelphia, Bethlehem and New England Railroad at Bethlehem, Pennsylvania and the Baltimore and Ohio Railroad (Chessie System) at Park Junction (Philadelphia), Pennsylvania. The parties agree, however, to request USRA to state whether D&H

is entitled, as an incident to the grant of its operating rights over the Joint Lines, to switch and classify its cars at intermediate points on the Joint Lines and to interchange cars with other carriers or operate onto or off other carriers at intermediate points on the Joint Lines other than those specified in this Section. The parties agree to be bound by USRA's determination. D&H shall not perform any local freight service on the Joint Lines except at stations published as D&H stations in the Official Open and Prepay Station List No. 93, I.C.C. No. A-58. Conrail shall have the right to admit other parties to the use of the Joint Lines with the prior consent of D&H whose consent shall not be withheld unreasonably.

Section 2.02. Employees.

(a) D&H shall operate its rail service over the Joint Lines with its own employees and at its sole expense subject to such Conrail rules, regulations and orders as shall be applicable to those lines provided that no employee shall engage in such operations over the Joint Lines until he or she shall have been successfully examined on applicable operating rules and regulations by D&H officers qualified by Conrail. This Agreement shall not require the re-qualification of any D&H officer or employee who has been successfully examined on or before the effective date of this Agreement.

(b) D&H shall also have the right to utilize and direct its own employees, at its sole expense, for any

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Section 7.10. Effective Date. This Agreement shall become effective on January 1, 1979, except that any outstanding disputes between the parties relating to events arising out of the operation of the Joint Lines between April 1, 1976 and the effective date of this Agreement shall be settled in accordance with the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:

CONSOLIDATED RAIL CORPORATION

W. F. ...
ASSISTANT SECRETARY

By: *Stuart M. Reed*
PRESIDENT

DELAWARE AND HUDSON RAILWAY COMPANY

R. S. Long

By: *[Signature]*
PRESIDENT & CHIEF
Executive Officer

JOINT LINES

<u>U.S.R.A. Code</u>	<u>Conveying Carrier</u>	<u>From (MP) (LV)</u>	<u>To (MP)</u>
<u>Oak Island - Freemansburg</u>			
0501	LV	Oak Island (6.5)	Newark Interchange (
0502A	LV	Newark Inter- change (11.4)	New Jersey/Pennsylva State Line (76.6)
0502A	LV	New Jersey/Penn- sylvania State Line (76.6)	Freemansburg (85.8)

Oak Island - Phillipsburg (CNJ)

0205	CNJ	Oak Island Jct. (1.7)	Elizabethport (5.5)
0201	CNJ	Elizabethport "FH" (8.9)	Phillipsburg (72.1)

Note: Line Segments 0501, 0502A, 0205 and 0201 are for the purpose of handling intermodal traffic including the right to LV's Oak Island intermodal facility and use of LV's Oak Island yard. The links are connective permitting use between Bethlehem Interlocking and Oak Island via either the LV or CNJ route

Freemansburg - Allentown - Lehighon (LV)

0502A	LV	Freemansburg (85.8)	Bethlehem Interlockin (88.6)
0502A	LV	Bethlehem Inter- locking (88.6)	Allentown (93.3)
0503A	LV	Allentown (93.3)	Lehighon (119.1)

Note: Line Segment 0502A includes the right to interchange with all railroads at Allentown/Bethlehem including the Philadelphia, Bethlehem and New England

Lehighon - Dupont (LV, LC&N)

0503A	LV	Lehighon (119.1)	Fraser (147.1)
0506	LV	Fraser (147.1)	Laurel Run (164.1)
0504	LC&N	Fraser (143.8)	Laurel Run (161.2)
0506	LV	Laurel Run (164.1)	DuPont (175.5)

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Saucon - Bethlehem Junction - Allentown Yard - Lehighon (LC&N)

0502F	LC&N	Saucon Yard	Bethlehem Junction (83.4)
0502F	LC&N	Bethlehem Junction (83.4)	Bethlehem (84.3)
0521	LC&N	Bethlehem (84.3)	Lehighon (114.7)

Note: Line Segment 0502F includes the right to interchange with all railroads at Allentown/Bethlehem, including the Philadelphia, Bethlehem and New England.

Line Segment 0521 includes the right to use Allentown Yard.

Allentown-Reading-Philadelphia (Reading and AT)

0502	AT	"R" Tower (88.2) (Including connecting track, E. Penn Jct.- Burn)	Burn (89.1)
0312	RDG	Burn (35.4) (same as AT Burn (89.1))	Pike (1.1)
0309	RDG	Park (2.4)	Falls (5.4)
0322B	RDG	Falls (5.4)	Reading (Belt Line Jct.) (61.4)
0339	RDG	Blandon (0.0)	Klappert Hall Jct. (13.0)

Sunbury - Rockville (PC, NC)

1314	PC	Kase (286.4)	Sunbury (287.5)
1314	NC	Sunbury (138.7)	Dauphin (93.4)
1314	PC	Dauphin (93.4)	Rockville (90.6)

Note: Line Segment 1314 links with line segments described in Article I, Joint Facilities of Agreement between the parties made November 3, 1978 covering lines between Rockville, Enola, Harrisburg, Perryville and Potomac Yard. Included is the right to interchange with Conrail at, and to use, Enola Yard

Lanesboro - Hornell (EL)

6303	EL	Lanesboro (189.8)	Binghamton "BD" (213.2)
6301	EL	Binghamton "BD" (213.2)	Hornell (331.8)

EXHIBIT A
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Hornell - Buffalo (EL)

6401	EL	Hornell (331.8)	Buffalo "Union" (418.0)
6401	EL	Buffalo "Union" (418.0)	Buffalo "FW" (422.4)

Note: Line Segment 6401 includes (1) the right to use Bison Yard and to interchange with all railroads including Conrail at Buffalo, and (2) the right to interchange with existing or future railroads between Binghamton "BD") and Buffalo, except Conrail.

6443	EL	North Alexander (395.9)	Attica (401.0)
6441	EL	Groveland (360.2)	North Alexander (360.2)

Note: Line Segment 6441 includes the right to interchange with all connecting railroads.

Abbreviations:

(AT)	Allentown Terminal Railroad Company
(CNJ)	Trustee, Central Railroad Company of New Jersey, Debtor
(EL)	Trustees, Erie Lackawanna Railway Company, Debtor
(LC&N)	Lehigh Coal and Navigation Company
(LV)	Trustees, Lehigh Valley Railroad Company, Debtor
(NC)	Trustee, Northern Central Railway Company, Debtor
(PC)	Trustees, Penn Central Transportation Company, Debtor
(RDG)	Trustees, Reading Company, Debtor

EXHIBIT 3



United States Railway Association

***Final
System Plan***

Volume I

VOLUME I (Parts I and II)

United States Railway Association

FINAL SYSTEM PLAN

for restructuring

Railroads in the Northeast and Midwest Region

pursuant to the

REGIONAL RAIL REORGANIZATION ACT OF 1973

JULY 26, 1975

INTERESTS DESIGNATED TO COMBAIL

LINE CODE	FROM STATION	TO STATION	WF1	WF2	BRANCH NAME	INTERESTS
TRANSFEROR: LEHIGH & SUSQUEHANNA R. F.*						
0502A	BETHLEHEM	BETHLEHEM JCT	88.6	89.8	BETHLEHEM CNR	*/TR TO OTHERS
0504	FRASER	LAUREL ION	143.8	161.2	LEHIGH & SUSQ	*/TR TO OTHERS
0521	PHILLIPSBURG	HAMPTON	72.1	72.8	LEHIGH & SUSQ	*/TR TO OTHERS
0521	FASTON	W. EASTON	72.8	74.4	LEHIGH & SUSQ	*
0521	FREEMANSBURG	BETHLEHEM JCT	81.3	84.6	LEHIGH & SUSQ	*
0521	BETHLEHEM JCT	STEEL	84.6	85.5	LEHIGH & SUSQ	*/TR TO OTHERS
0521	STEEL	LEHIGHTON	85.5	114.7	LEHIGH & SUSQ	*/TR TO OTHERS
TRANSFEROR: HARBAN TERMINAL & TRANS. CO.						
0211	HARBAN RIVER W	NORTH SECON	21.7	23.2	HARBAN NORTH SHORE	LINE TO CRC
TRANSFEROR: BUFFALO CREEK RAILROAD						
6470	WILLIAMS ST	PECK SLIP	0.0	5.6	BUFFALO CREEK RR	LINE TO CRC/TR TO OTHERS
SYSTEM: CENTRAL R. F. CO. OF NEW JERSEY						
TRANSFEROR: CENTRAL R. R. CO. OF NEW JERSEY**						
0201	JERSEY CITY	NY INTERLOCKING	0.0	2.6	MAIN LINE CSJ	LINE TO CRC
0201	EY INTERLOCKING	RAYMOND JST	2.6	5.0	MAIN LINE CNJ	LINE TO CRC
0201	RAYMOND JST	RAYMOND 'B'V'	5.0	7.0	MAIN LINE CNJ	LINE TO CRC
0201	ELIZABETH PH	PARTIA	4.9	35.8	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0201	FARLAN	HIGH BRIDGE	35.8	52.2	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0201	HIGH BRIDGE	HIGH BRIDGE	52.2	52.7	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0201	HIGH BRIDGE	HAMPTON	52.7	54.6	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0201	HAMPTON	PHILLIPSBURG	54.6	71.2	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0201	PHILLIPSBURG	PHILLIPSBURG	71.2	72.1	MAIN LINE CNJ	LINE TO CRC/TR TO OTHERS
0202	COMMUNIFAM	WEST SIDE AVE	1.0	3.1	WEST SIDE BRANCH	LINE TO CRC
0203	ERLIS JCT	NEWARK	5.5	7.1	NEWARK & NEW YORK BR	LINE TO CRC
0204	KEAFNY	ERLIS JCT	4.0	5.5	NEWARK & NEW YORK BR	LINE TO CRC
0205	ERLIS JCT	ELIZABETHCIT	0.0	5.5	NEWARK&ELTZ BR	LINE TO CRC
0207	KOOPERS LANE	ELMINGTON	13.7	15.7	SOUTH BRANCH	LINE TO CRC
0207	HOPATCONG JCT	HAMPTON	23.8	25.1	HIGH BRIDGE BR	LINE TO CRC
0208	LAKE JCT	MCFRIS CTY JCT	0.6	0.9	LAKE HOPATCONG BR	LINE TO CRC
0211	ELIZABETHCIT	WOODRIDGE JCT	9.5	20.0	PERTH AMEY ER	LINE TO CRC
0211	WOODRIDGE JCT	HARBAN AVE MO	20.0	21.7	PERTH AMEY BR	LINE TO CRC
0212	ELIZABETH RIVER	WARNERS	0.0	3.5	SOUND SHORE BRANCH	LINE TO CRC
0213	FAHWAY	PETROLEOP	0.0	1.5	CARTABET ER	LINE TO CRC
0214	WILLIAMSBURG	CHROME	1.3	2.7	REFORMATORY BR	LINE TO CRC
0215	PEE LAKE	LAKEHURST	36.1	66.0	SOUTHERN M/L	LINE TO CRC
0215	LAKEHURST	CHATSWORTH	66.0	84.3	SOUTHERN P/L	LINE TO CRC
0215	WINSLOW JCT	VINELAND	104.2	120.1	SOUTHERN M/L	LINE TO CRC
0215	VINELAND	NORMA	120.1	123.9	SOUTHERN M/L	LINE TO CRC
0215	BRIDGECTON JCT	BRIDGECTON JCT	130.5	130.8	SOUTHERN M/L	LINE TO CRC
0215	BRIDGECTON JCT	BRIDGECTON	130.8	132.8	SOUTHERN M/L	LINE TO CRC
0217	WANSBURG	NATCO	5.2	7.2	SEASHORE BRANCH	LINE TO CRC
0217	NATCO	HARTMAN	7.2	10.9	SEASHORE BRANCH	LINE TO CRC
0218	PASILCONGBRANCH	BRANCHCPT	0.9	1.2	INDUSTRIAL BRANCH	LINE TO CRC
0219	LAKEHURST	LAKEHURST	39.8	40.0	TRGS BRANCH	LINE TO CRC
0219	LAKEHURST	TOMS RIVER	40.0	47.4	TRGS BRANCH	LINE TO CRC
0220	BRIDGECTON JCT	CHERFIELD	0.0	3.8	CHERFIELD BRANCH	LINE TO CRC
0221	BRIDGECTON JCT	HAURICHTON	0.0	18.1	CUMBERLAND & HARRICE	LINE TO CRC
0223	CHERFIELD	MORNING PAFN	0.0	0.7	MORNING PAFN	LINE TO CRC
0299	COMMUNIFAM AVE	JERSEY AVE YARD	0.0	0.7	JERSEY AVE BRANCH	LINE TO CRC
TRANSFEROR: DOWER & ROCKAWAY RAILROAD						
0207	WHARTON	ROCKAWAY	25.1	30.1	HIGH BRIDGE BR	LINE TO CRC
0207	ROCKAWAY	PUBLIC ROAD	30.1	31.1	HIGH BRIDGE BR	LINE TO CRC
TRANSFEROR: WHARTON & NORTHERN RAILROAD						
0209	FICATINNY	MURRIS CTY JCT	11.1	14.6	WHARTON&NORTHERN	LINE TO CRC
TRANSFEROR: MT. ROBE MINERAL RAILROAD						
0210	WHARTON	MOUNT ROBE	0.0	3.6	MT ROBE MIN BR	LINE TO CRC
TRANSFEROR: EAYSHORE CONNECTING RAILWAY						
1499	CAR ISLAND	KEAFNY	0.0	2.7	BAY SHORE COIN RR	LINE TO CRC
TRANSFEROR: LEHIGH & NEW ENGLAND RAILWAY						
0224A	BETHLEHEM JCT	MARTINE CREEK	0.0	28.3	LENE	LINE TO CRC
0224B	FAUTC	TAKODA	0.0	7.3	LENE	LINE TO CRC
0224C	ALLEN JCT	ALLENTON	0.0	4.8	LENE	LINE TO CRC

* CRC TO ACQUIRE ROG'S INTERESTS AND LV'S LEASEHOLD

** INCLUDES ANY OF CENTRAL RAILROAD OF PENNSYLVANIA'S REMAINING INTEREST IN PROPERTY AT MINDOKA JCT.

EXHIBIT 4

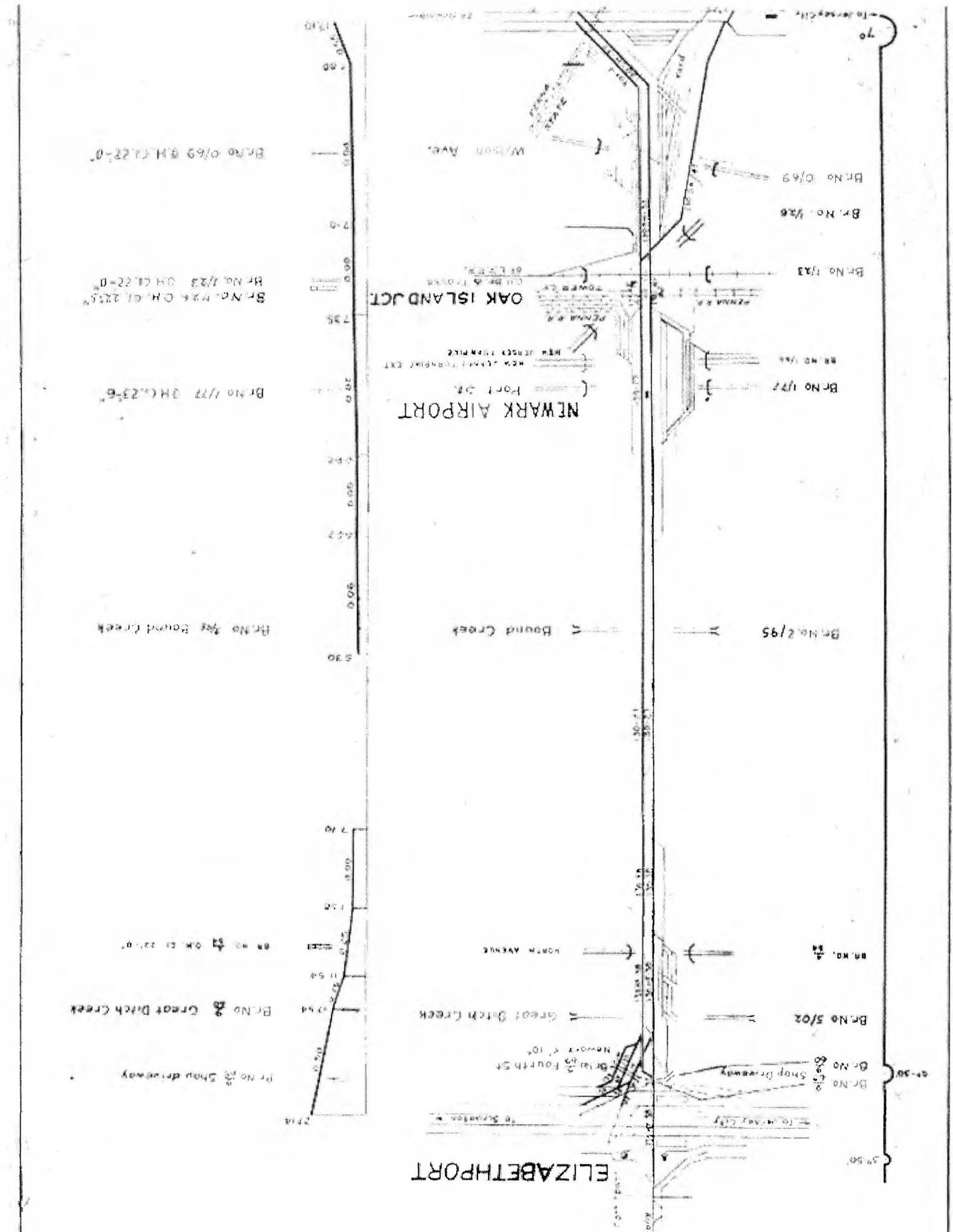


EXHIBIT 5



**LEHIGH VALLEY
RAILROAD**

* * *

TIMETABLE No. 10

In effect 2:01 A.M., Eastern Standard Time
Sunday, August 10, 1975

* * *

R. C. HALDEMAN
TRUSTEE and
CHIEF EXECUTIVE OFFICER

* * *

W. C. WIETERS
Senior Vice President and
Chief Operating Officer

* * *

F. J. JACKSON
Superintendent Transportation

* * *

Division Superintendents:	Divisions:
G. F. BRESSLER	NEW YORK
A. G. LAGEMAN, III	BUFFALO

* * *

**FOR THE GOVERNMENT OF
EMPLOYEES ONLY**

STOP

Damage to Freight

— By —

HANDLING CARS CAREFULLY

OUR REVENUE IS AFFECTED
FAVORABLY OR UNFAVORABLY
BY THE TYPE OF SERVICE
WE RENDER THE PUBLIC

Overspeed Couplings Cause Damage
To Judge Speed of Car Approaching Coupling

Sight car with fixed object such as a telegraph pole. Start counting seconds it takes car to pass the fixed object. An excellent way to get accurate timing without a watch is to count "one hundred and thirty-one, one hundred and thirty-two" and so on as the car passed the fixed object.

TABLE SHOWING SPEED OF CARS IN M.P.H.

If car passed object in:	It was traveling			
	40 ft. car	50 ft. car	60 ft. car	85 ft. car
4 seconds	7.0	8.7	10.3	14.6
5 seconds	5.6	7.0	8.2	11.6
6 seconds	4.7	5.9	6.9	9.7
7 seconds	4.0	5.0	5.9	8.3
8 seconds	3.5	4.4	5.2	7.3
9 seconds	3.1	3.9	4.6	6.5
10 seconds	2.8	3.5	4.1	5.8
11 seconds	2.5	3.2	3.8	5.3
12 seconds	2.3	2.9	3.5	4.9
13 seconds			3.2	4.3
14 seconds			3.0	4.2
15 seconds			2.8	3.9
16 seconds				3.6
17 seconds				3.4
18 seconds				3.2
19 seconds				3.1
20 seconds				2.9

THINK SAFE. ACT SAFE AND BE SAFE

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NOTE — Applies on pages 5 to 19, inclusive.

X - Indicates in service continuously.
 A - Indicates automatic interlocking.
 B - Indicates in service part-time.
 R - Indicates remote controlled from.

Interlocking	Interlocking Station	Block Station	STATIONS	Distance from New York	Sidings Assigned Direction Car Capacity 50 ft. cars		
					East	West	Both
JERSEY CITY TO WEST OAK ISLAND							
			JERSEY CITY (N. Y. Division)	1.0			
			JERSEY AVENUE JCT.	2.4		Yard	
			COMMUNIPAW AVE.	2.9		Tracks	
			CHAPEL	4.4			
			CONSTABLE JCT.	5.1			
X	X	X	NEWARK BAY DRAW	7.0			
			OAK ISLAND JCT.	8.6		Yard	
X			WEST OAK ISLAND R-Newark	10.5		Tracks	
MAIN LINE — WEST OAK ISLAND TO FRASER							
X			WEST OAK ISLAND				
			R-Newark	10.5			
X	X	X	NEWARK	11.4			
			HILLSIDE	12.7			
X			TOWNLEY R-Newark	14.5			
X			ROSELLE PARK R-Newark	16.0			
X			ALDENE R-Newark	16.9			
			CRANFORD	17.9			
			CLARK	19.4			
			GOODMANS	21.3			
X			POTTER R-Newark	23.2			
			OAK TREE	24.9			
			SOUTH PLAINFIELD	26.5			
			NEW MARKET	29.1			
			MIDDLESEX	30.8			
			BOUND BROOK	33.1			
X			PORT READING JCT.				
			R-Easton	35.8			
			MANVILLE	36.4			
			ROYCE	38.2			
			READ VALLEY	42.0			
			NESHANIC	44.7			
			THREE BRIDGES	48.6			
			FLEMINGTON JCT.	51.0			
			STANTON	54.1			
			LANDSDOWN	57.7			
			JUTLAND	60.7			
X			PATTENBURG R-Easton	62.3			
			BELLEWOOD (Musconetcong Tunnel)	64.0			
			WEST END TUNNEL	65.2			
X			WEST PORTAL R-Easton	66.2			
			BLOOMSBURY	68.6			
			MUSCONETCONG JCT.	69.9			
			ALPITA	73.7			
			GREENS BRIDGE	74.6			
X			PHILLIPSBURG R-Easton	76.3			
			PA.-N. J. STATE LINE	76.6			
X	X	X	EASTON	77.0			
			SO. EASTON	77.8			
X			ABBOTT R-Easton	77.9			
			GLENDON	78.6			

MAIN LINE — WEST OAK ISLAND TO FRASER

Interlocking	Interlocking Station	Block Station	STATIONS	Distance from New York	Sidings Assigned Direction Car Capacity 50 ft. cars		
					East	West	Both
X			RICHARDS R-Easton	80.7			
			REDINGTON	83.0			
			FREEMANSBURG	85.8			
			FLORENCE YARD	86.1			
X			BETHLEHEM R-Easton	88.6			
			GEISINGERS	90.7			
			EAST PENN JCT.	92.5			
			ALLENTOWN	93.3			
			CAP JCT.	95.0			
			FULLERTON	96.0			
X			CATASAUQUA R-Easton	97.0			
			COPLAY	99.0			
X			CEMENTON R-Easton	100.3			
			LAURYS	102.7			
			TREICHLER	104.2			
			SLATINGTON	109.5			
			LEHIGH GAP	111.4			
X			LIZARD CREEK R-Easton	114.9			
			BOWMANSTOWN	115.7			
			MAHONING	117.7			
X			LEHIGHTON R-Easton	119.3			
X			PACKERTON JCT. R-Easton	121.3			
			JIM THORPE	122.7			
			HETCHEL	125.6			
			OX BOW	127.4			
			OLD PENN HAVEN	129.7			
			M & H JCT.	130.6			
			DRAKES CREEK	135.1			
			ROCKPORT TUNNEL	136.8			
			HICKORY RUN	141.0			
			TANNERY	143.8			
			WHITE HAVEN	145.7			
X			FRASER R-Coxton Int.	147.1			

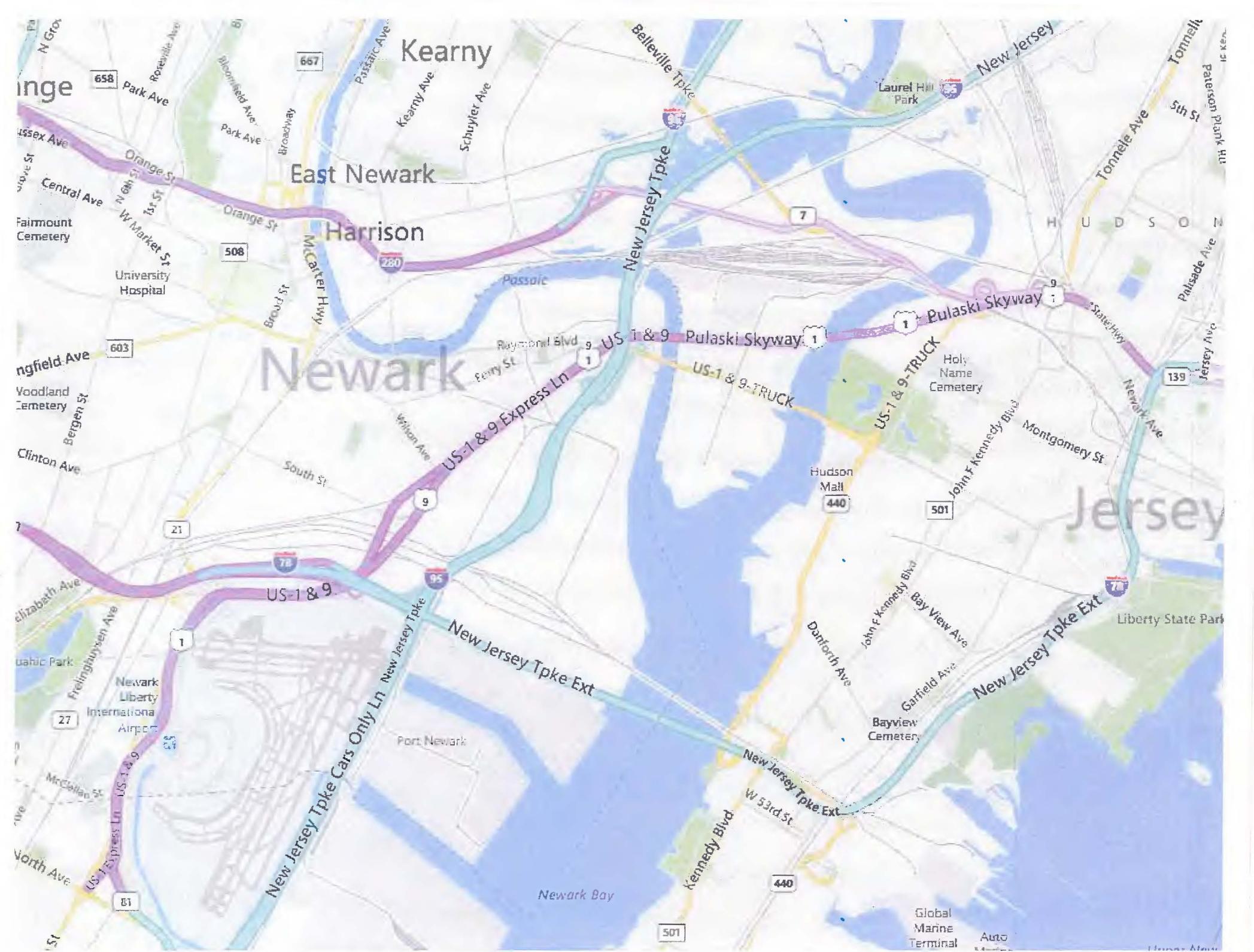
The Direction New York to Fraser is Westward.

L & S AREA — MAIN LINE BETHLEHEM TO LEHIGHTON*

X			BETHLEHEM R-Easton	84.3			
X			JU R-Steel	84.5			
X	X	X	STEEL	85.5			
X			VN (No. 1 Track) R-Steel	86.9			
X			VN (No. 2 Track) R-Steel	87.1			
X	X	X	R TOWER	88.2			
			EAST ALLENTOWN	88.8			
			WK	90.2			
			CATASAUQUA	92.5			
			NORTHAMPTON	94.5			
			SIEGFRIED	95.6			
X			TREICHLER R-R Tower	100.0			
			WALNUTPORT	104.7			
			PALMERTON	108.4			
			WEST END HAZARD	110.1			
			BOWMANSTOWN	111.0			
			WEISSPORT	114.0			
X			LEHIGHTON R-Easton	114.7			

The Direction Bethlehem to Lehighton is Westward.
 * Mileage between Bethlehem and Lehighton indicates L & S Area Mile Posts.

EXHIBIT 6



Orange St
Central Ave
W Market St
University Hospital

Kearny
East Newark
Harrison

Newark
New Jersey Tpke
New Jersey Tpke Ext

Pulaski Skyway
US-1 & 9-TRUCK

Jersey
New Jersey Tpke Ext

658
603
21

667
508
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139
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-156 (SUB-NO. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN BROOME COUNTY, NY; MIDDLESEX, ESSEX, UNION, SOMERSET, HUNTERDON,
AND WARREN COUNTIES, NJ; LUZERNE, PERRY, YORK, LANCASTER,
NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND,
DAUPHIN, LEBANON, AND PHILADELPHIA COUNTIES, PA; CECIL, HARFORD,
BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE'S COUNTIES, MD; THE
DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA

REPLY TO PETITION TO TOLL TIME TO FILE AN OFA

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Counsel for Delaware and Hudson
Railway Company, Inc.

Dated: May 8, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-156 (SUB-NO. 27X)

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BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE'S COUNTIES, MD; THE
DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA

REPLY TO PETITION TO TOLL TIME TO FILE AN OFA

Delaware and Hudson Railway Company, Inc. ("D&H") submits this Reply to the Motion to Toll Time to File an OFA ("Petition to Toll") filed by James Riffin ("Riffin") in this proceeding on April 20, 2015. D&H opposes Riffin's petition on the grounds that that the Notice of Intent to File an Offer of Financial Assistance and First Supplement to Notice of Intent to File an Offer of Financial Assistance (collectively the "OFA Notices") seek rights that are outside the permissible scope of the offer of financial assistance ("OFA") process. Accordingly, the OFA Notices are wholly ineffective and Riffin's Petition to Toll should be denied.

INTRODUCTION

On March 19, 2015, D&H filed a Notice of Exemption to discontinue 670 miles of trackage rights using the 2-year out of service class exemption. The trackage rights to be discontinued include 660 miles of overhead trackage rights and 10 miles of local traffic rights in the Philadelphia terminal area. The majority of the trackage rights have not been used to move

either overhead or local traffic in more than a decade, and no local traffic has moved over the remaining trackage rights in more than two years. On April 8, 2015, the Notice of Exemption was published in the Federal Register. Consistent with the statutory OFA provisions and ample Board precedent, the Board expressly limited the type of OFAs that are permissible in this proceeding to OFAs “to subsidize continued rail service.” STB Docket No. AB-156 (Sub-No. 27X), slip op. at 3 (served April 8, 2015).

On April 20, 2015, Riffin filed the OFA Notices together with discovery requests. Notwithstanding the Board’s limitation, the OFA Notices fail to state an intent “to subsidize continued rail service.” Rather, the OFA Notices state an intent to file offers to acquire rail line segments, to subsidize new hypothetical traffic, and to acquire D&H rights in various yards. Such offers are beyond the permissible scope of the OFA provisions and therefore are not valid OFA’s.

It is important to note that the rail service Riffin seeks to subsidize is entirely hypothetical traffic, which if it existed, D&H could not currently serve. D&H lacks the local traffic rights needed to handle the hypothetical Orangeville Yard traffic and lacks the facilities at Oak Island, among other things, needed to handle the hypothetical Oak Island traffic. In any event, D&H has not operated out of Oak Island in years and has not operated through Baltimore in more than a decade. Thus, there is no existing D&H rail service to be continued.

Because the OFA Notices do not state an intent to submit a valid OFA, i.e., to provide a subsidy “to continue existing rail service,” the OFA Notices themselves are not valid and Riffin’s Petition to Toll based on those notices should be denied.

ARGUMENT

It is well settled that in a discontinuance proceeding an offer of financial assistance is limited to subsidizing the continued operation of trackage rights, not the acquisition of the trackage rights or of the line itself; the OFA provisions under 49 U.S.C. § 10904 to acquire a rail line do not apply. *See, e.g., Del. and Hudson Ry. Co., Inc.—Discontinuance of Trackage Rights Exemption—In Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY*, STB Docket No. AB-156 (Sub-No. 25X), slip op. at 2-4 (STB served March 30, 2005) (“2005 D&H Discontinuance”) (“Where discontinuance of trackage rights is involved, section 10904 can be used for involuntary subsidization of the trackage rights (as a temporary, transitional measure for up to 1 year”). In *2005 D&H Discontinuance*, the Board explained the limits and objectives of the OFA process. In that proceeding, Riffin’s CNJ sought to misuse the OFA process to purchase the subject trackage rights and to obtain interchange and yard facilities. Riffin argued that such rights were needed “so that [CNJ] can attempt to replicate the competitive situation envisioned some 30 years ago, when the Final System Plan was implemented.” *Id.* The Board, in rejecting this broad interpretation of the OFA provisions explained:

[T]he OFA provisions, at 49 U.S.C. 10904(c), are directed at a more limited and immediate objective: preserving existing operations over “the railroad line that is the subject of [the abandonment or discontinuance] application.” Section 10904 is not a mechanism for attaining broader purposes using broader facilities than those proposed for abandonment or discontinuance.

Id. The Board concluded that CNJ’s offer, which did not involve an offer to subsidize existing operations over the subject rail line, did not “constitute a valid OFA.” Consistent with longstanding Board precedent, the Board expressly limited OFAs in this proceeding to OFAs to subsidize continued rail service.

Under the Board's OFA rules, a prospective offeror is required to file within the statutory deadline a formal notice expressing his intent to file an OFA. Generally, when such a notice is timely filed, the filer is entitled to discovery and may be entitled to tolling of the time to file an OFA either automatically or upon petition, but only if the expression of intent is *bona fide*. See 49 CFR § 1152.27(c)(2)(ii)(C) (Board will entertain petitions to toll the 30 day period for submitting an OFA if the information is not provided after a *bona fide* request). A notice of an intent to file an OFA that, on its face, would not constitute a valid OFA, is not *bona fide*, and does not trigger the OFA discovery or tolling provisions.

Here, Riffin has noticed his intent to file OFAs [1] to acquire and operate portions of certain rail lines; [2] to subsidize D&H movement of potential new traffic that D&H lacks either the trackage rights and/or the facilities to handle; and [3] to acquire "whatever rights" D&H may have in various third parties' yards. None of these constitute a valid and permissible use of the OFA process and therefore Riffin's OFA Notices cannot be considered *bona fide*.

Because no valid notice of intent to file an OFA has been filed and the time for filing has expired, there is no basis for tolling the time to file an OFA or otherwise delaying the effective date of the discontinuance exemption any further. Accordingly, the Board should reject Riffin's Petition to Toll.

A. Riffin Cannot Use the OFA Process to Acquire a Third Party's Rail Lines.

In addition to being well outside the scope of the OFA process for discontinuances, Riffin's purported intent to offer to acquire and operate portions of rail lines suffers from other fatal infirmities. Fundamentally, D&H does not own the underlying rail line segments in New Jersey and Pennsylvania that Riffin seeks to acquire. Rather, they are owned by non-parties, including Conrail. If the OFA forced sale provisions cannot be used to force a sale of the discontinuing carrier's trackage rights, they certainly cannot be used to acquire the property of a

third party. Moreover, several of the segments that Riffin seeks to acquire are not even segments over which D&H has trackage rights and are not involved in this proceeding. For example, Riffin seeks to acquire line segments in Hudson County, New Jersey. However, D&H does not have trackage rights in Hudson County.¹

B. D&H Does Not and Cannot Provide the Rail Service Riffin Seeks to Subsidize.

Riffin’s intent to file an OFA to subsidize D&H rail service from Oak Island in New Jersey and from Orangeville in Baltimore is similarly infirm as D&H does not and currently cannot provide this rail service. Since D&H trackage rights through the Baltimore area are overhead only, it has no right to serve local traffic to or from Orangeville. At Oak Island, D&H lacks the facilities that would be necessary to support the movement of municipal solid waste and silica from Oak Island, among other problems. Clements V.S. at 4.

Even if D&H could serve Riffin’s non-existent, hypothetical traffic – it cannot -- there is no credible basis to believe that such traffic will suddenly materialize. Riffin identifies no actual shipper, nor any actual traffic, and fails to explain why the traffic does not currently move when no subsidy is required.

Indeed, Riffin’s desire to subsidize non-existing, hypothetical traffic is perplexing. Riffin is neither a shipper nor a governmental entity seeking to use the OFA process to preserve existing rail service or competition. In fact, no shipper is threatened with the loss of rail service as a result of this discontinuance and shippers at Oak Island in particular will continue to enjoy competitive transportation options. Under these circumstances, there is no reasonable scenario

¹ Riffin’s assertion that D&H’s trackage rights extend to Jersey City, NJ is incorrect. *See* Verified Statement of James D. Clements (“Clements V.S.”) at 2-3 and Exs. 1-6 attached thereto attached to D&H’s Reply to Petitions to Revoke Exemption.

where Riffin's subsidy of D&H service would be economically rational. The lack of an economic rationale and Riffin's past history should raise a red flag for the Board as to Riffin's true intentions in filing the OFA Notices, among the myriad other filings that Riffin has filed in this proceeding.² Also, it is further evidence that Riffin is not a *bona fide* offeror.

In any event, an OFA is valid only for the limited purpose of preserving existing rail service. Here, D&H has not provided rail service to or from Oak Island since June 2012 and through Baltimore in more than a decade. *Id.* at 2. Accordingly, there is no existing D&H rail service to subsidize.

C. The OFA Process Cannot Be Used to Acquire the Discontinuing Carrier's Rights in Third Parties' Yards.

Riffin's Supplemental Notice of Intent to File an OFA seeks to acquire D&H's operating rights in several rail yards, and is equally defective. These facilities are not the subject of this trackage rights discontinuance proceeding and are not within the scope of permissible OFAs in this proceeding. *See 2005 Discontinuance* at 3 (rejecting Riffin's OFA to acquire rights in interchange and yard facilities as not valid). Riffin also seeks to acquire the "Conrail switching rights the D&H has in the Elizabethport, NJ yard" but the OFA process does not permit the involuntary acquisition of contractual rights a carrier may have with another party. Accordingly, there is also no basis for the Board to entertain an OFA to acquire any of the rights Riffin purports to seek to acquire in his Supplemental Notice.

² Due to previous concerns regarding Riffin's filings, the Board stated that it will "closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board, and we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated." *Norfolk So. Ry. Co.—Abandonment Exemption—In Norfolk and Virginia Beach, VA*, AB-290 (Sub-No. 293X), slip op. at 8 (STB served November 6, 2007).

D. Until Proven Otherwise, Riffin Should Not Be Considered a Financially Responsible Party.

Lastly, the Board should have serious concerns regarding Riffin's financial ability to provide a subsidy. The Board has previously determined that Riffin is not a financially responsible party due to his insolvency and filing for bankruptcy protection. *Consol. Rail Corp.—Aban. Exemption—In Hudson Cnty., N.J.*, AB-167 (Sub-No. 1190X), slip op. at 5 (STB served May 17, 2010). Unless and until Riffin provides evidence that would allow the Board to reach a different conclusion, Riffin should not be considered to be a financially responsible party capable of making a *bona fide* offer.

CONCLUSION

For the foregoing reasons, D&H respectfully requests that the Board deny Riffin's Petition to Toll.

Respectfully submitted,

Dated: _____

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